

NO. 48783-7-II

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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ROBERT REICHERT, Appellant,

vs.

JENNIFER REICHERT REICHERT, Respondent

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REPLY BRIEF OF RESPONDENT JENNIFER REICHERT

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I.

### ASSIGNMENTS OF ERROR

Appellant lists IV assignments of error with subparts. These may be summarized as follows:

- 1) Did the Court abuse it's discretion by denying the Appellant's Motion for Continuance on November 20, 2015?
- 2) Did the Court abuse it's discretion when it allowed the Supplemental Guardian ad Litem's report to be filed the day before trial?
- 3) Did the Court abuse it's discretion when it ordered Restrictions on the Father's parenting time and his decision making?
- 4) Did the Court abuse it's discretion when it did not place restrictions on the mother's parenting time and decision making because of a history domestic violence?

Appellee asks this court to award her fees and costs for the expense of responding to a frivolous appeal by the Appellant and for his intransigence.

## II.

### STATEMENT OF FACTS

It goes without saying that the parties have not had a friendly relationship for many years. The evidence clearly indicates that the Appeallant has used the Abusive Use of Conflict, stalking, unproven allegations against the mother, failture to comply with simple requirements to properly deal with his son and, in all instances with the mother has refused to discuss matters, notify her of issue, ignore the use of proper communication devices and otherwise place their son in a dangerous mind set that harms his normal development, to the extent that the child has been in counseling for almost the entire time since the dissolution of marriage in January of 2014.

The unrefuted Findings of Fact and Conclusions of Law by Judge Garold Johnson were entered in January, 2016 after a 3 day trial that commenced on December 8<sup>th</sup> and Concluded on December 10<sup>th</sup>. The court heard the testimony of several witnesses and considered the report of the Guardian ad Litem as well as reports from various health care providers and reporters.

I say the unrefuted Findings and Conclusions because the Appellant does not allege that any Finding or Conclusion is incorrect. What he is actually saying is that the court made a wrong decision but that is not an issue on appeal. So, I think it is time to respond to the Brief of Appellant.

### III.

#### ARGUMENTS OF LAW

The major issues before this court the determination of Judge Johnson. Appellant spends a significant portion of his brief arguing that Judge Johnson was wrong about his decisions in this case and that there is no substantial evidence to support his position. It has long been the law in Washington that the credibility of witnesses and what weight to assess their testimony is left to the trier of fact. **State v. Perez-Cervantes, 141 W2nd 468, 6 P3d 1160 (2000).** In **Personal Restraint of Gentry, 137 Wn 2d 378, 972 P 2d 1250 (1999)** the Supreme Court stated, quoting another case, "Credibility determinations are for the trier of fact **and cannot be reviewed on appeal.**" (emphasis added). pp 410-411. They stated that "The trial court had the opportunity to evaluate the witnesses' demeanor and judge their credibility". p 410. The fact



that Appellant would prefer to have a different result or wanted his witnesses or himself believed more does not create a standard or reason for review. The issue of substituting judgments is, like credibility of witnesses, firmly established in Washington and our Appellate Courts have often stated that the courts may not substitute its judgment for that of the trial court. In Sparks v. Douglas County, 127 Wn 2d. 901, 904 P 2d. 738 (1995) the Supreme Court held, "The reviewing court may not substitute its findings for those of the trial court". Pg. 910. In Thorndike v. Hesperian Orchards, 54 W 2d. 570, 343 P. 2d. 183 (1959) they are even stronger where they held, "If we were of the opinion that the trial court should have resolved the factual dispute the other way, the constitution does not authorize this court to substitute its findings for that of the trial court. Pg. 575.

Looking at the case in a light most favorable to the Appellee, the standard which is to be applied in this case (see Estate of Lint, 135 W 2d. 518, 957 P 2d. 755 (1998) pg. 532), the substantial testimony of harm to the child is found in the opinions of Desiree Hosannah, the appointed and trained Guardian ad Litem, Christine Forrey, Susan DeVore, the various reports from C.P.S., the child's

school officials, and Andrew Gray, the child's therapist, all stating that the child is being groomed by the father by the use of Abusive use of Conflict, making continual CPS allegations all determined to be unfounded, and not cooperating with them in their various efforts to do what is best for Jack, the minor child of this case.

**Estate of Lint**, supra, is interesting because it also involved the testimony of various experts. In upholding the trial court's determinations of credibility, the Supreme Court stated at page 532, "Appellant does not suggest that Dr. Capwell given the above, it now behooves us to look at the specific Issues raised by the Appellant. Let us start with the first issue, Abuse of Discretion for not granting a continuance on November 20, 2015.

To begin with, the issue is Abuse of Discretion. It is not an abuse of discretion if the court does not agree with one party-that is what always happens with motions. The issue is whether or not the decision is somehow abused. The trial court determined that the filing of the GAL report 19 days before the trial was not a reason to delay the trial. What is the abuse? By law, contained in RCW 26.09.220, requires (subject to certain other issues) the GAL to file her report 10 days before the trial. If the report is filed 19 days



before the trial how is that basis to ask for a continuance? It appears fairly clear that the Appellant should be ready for trial by the time they receive the report 10 days before trial so how are they in any way prejudiced if they know what is needed 19 days before trial? Put another way, if every time a GAL report is filed 10 days before trial it is a basis to ask for a continuance, what is the basis of the 10 day requirement.

Judge Johnson weighed all the issues and decided there was no basis to put off the trial as a result of the early filing of the GAL report. In addition, and not refuted by the Appellant at the time, is the Court's determination that "... a party can't be part of the problem and then come for relief, if they cause the problem themselves or are a cause of the problem themselves. And it is apparent to the court that the father did delay this thing getting under way when it should, is also engaged in conduct that is not helpful." (RP Verbatim Transcript 11-20-15 pg. 9-10). In addition, the court was clear that if, after reviewing the report (and a report to be filed later as understood by the parties) something substantial was shown the case could be continued at that time. There is no abuse of discretion by the trial judge in this instance.

The Second Assignment of Error is that the Trial Judge Abused his discretion when he allowed the Supplemental report of the GAL to be entered and reviewed even though it was not filed until the day before the trial commenced.

I will not recite, again, the authorities relating to discretion shown above. The question is then "Did Judge Johnson abuse his discretion?"

I point to the specific language of the statute cited above: RCW 26.09.220 (3) say, in relevant part, that the report is to be filed at least 10 days before trial "unless a shorter time is ordered by the court for good causes shown". The ruling of Judge Johnson on the lateness issue is contained in the Report of Proceedings transcript on December 8<sup>th</sup>, 2015 page 14 and 15. He stated:

In terms of the timeliness issue: that did come in today. There's been **no motion to continue** yet again. I don't know exactly what the problems are. They may require some additional time for rebuttal issues, but I intend to go forward today.

If it turns out you need additional time for rebuttal witnesses, you may raise that at the appropriate time."

So the Appellant is incorrect in saying the court abused its discretion by denying the motion since it was only delayed and

could have been raised if necessary. It was not again raised and, hence, has been waived.

The Third Assignment of error goes to the conduct of the GAL. First, there is testimony and argument during this action that implies that the GAL did and did not do her job. In other words, there is conflicting testimony by people, including the GAL about this. The trier of fact has to determine who is accurate and who is not when they testify. It has already been pointed out that it is not the Appellate Court's duty to try to reevaluate credibility or redo the findings of fact if they are supported by evidence. The evidence is clear that the GAL did her job as well as she could given the conduct and intransigence of the Appellant. It is not an abuse of discretion to decide against a party-that's what a judge is required to do in these types of cases. The evidence supports his decisions so there is no legal argument.

Appellant has alleged that the court abused its discretion for not imposing .191 restrictions on the mother based upon his testimony. This decision was made by the court in the 2014 Parenting Plan, not this decision, and there was no appeal from that decision. Hence, it becomes the law of the case and is not

appropriate in this action, especially since the testimony is that there has been no Domestic Violence by the mother after the January, 2014 Parenting Plan.

Appellant wants to complain that he was wrongly denied joint decision making. Simply put, the believable testimony in this case warrants such an action. The father has regularly used the Abusive Use of Conflict to impair the care of the child. He has not participated in the ongoing counseling necessitated by his own conduct in this case. He has tried to undermine the efforts of the counselor as it relates to the child. There are specific findings of fact in the Parenting Plan on those issues and they support the removal of joint decision making for the best interest of the child.

Appellant, finally, alleges that the court failed to protect the child from future domestic violence. I call this court's attention to the Parenting Plan adopted by the court in January, 2016, which identifies, on page 1 paragraph 2.2 the problems that need to be dealt with and page 7 such protections for the minor to alleviate those issues. Therefore, it is not accurate to state that the court failed to take steps to protect the minor child from future domestic violence.



I would also be irresponsible if I did not point out that there is absolutely no evidence found by the court that the child was in danger of domestic violence by the mother. Once again, the Appellant wants to reargue the case, not deal with legal issues.

In 2014 a form of joint residential time was ordered and all issues of .191 were put another way one would ask Capwell did not so testify (as found by the trial court) but merely points out that Dr. Capwell's testimony was refuted by Christian's expert witness." They go on to hold that the court must look at the evidence in favor of the Respondent. This coincides with the other holdings that credibility is left to the trial court.

I have asked for the award of fees and costs in this appeal. I was forced, because of my inexperience in these matters, to use the partial services of an attorney for my briefing. I had to pay for the costs of documents and records. I have been forced to respond to matters and issues that are clearly nothing but rehashing of factual matters and not of legal issues to be resolved by this court. The beginning of my brief states that the trier of fact makes discretionary decisions based upon the determination of credibility and testimony. I also point out that there is not one challenge to a

Finding of Fact nor a Conclusion of Law except to disagree with that Finding. Disagreement is not a basis for a legal determination.

This court has authority under both the provisions of RCW 26.09.140 and for intransigence or other such factors. Additionally, this court has authority to award attorney fees for a frivolous appeal and this case is clearly such a case.

#### IV.

#### CONCLUSIONS

It is respectfully argued that Judge Johnson made exactly the right decision based upon the credible evidence and no legal error occurred.

RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of August, 2017.

By 



**JENNIFER RANDAZZO - FILING PRO SE**

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